

SENATE RECORD VOTE ANALYSIS

105th Congress
2nd Session

Vote No. 122

May 7, 1998, 10:00 am
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IRS REFORM/Ethics Law Exemptions for IRS Union

SUBJECT: Internal Revenue Service Restructuring and Reform Act of 1998 . . . H.R. 2676. Thompson/Sessions amendment No. 2356.

ACTION: AMENDMENT REJECTED, 42-57

SYNOPSIS: As reported, H.R. 2676, the Internal Revenue Service Restructuring and Reform Act of 1998, will radically restructure the Internal Revenue Service (IRS) to make it more accountable and responsive to taxpayers' needs, and will enact comprehensive reforms to protect taxpayers from IRS abuses of power.

The Thompson/Sessions amendment would strike the exemptions from criminal ethics laws that will be given to the IRS union representative on the IRS oversight board that will be created by this bill (for a description of that board, see vote No. 121). Specifically, when acting on behalf of his union, the union representative will generally be exempt from four criminal laws: 18 U.S.C. 203, which makes it a crime to "demand, seek, receive, accept, or agree to receive or accept" any compensation as an agent or attorney for a third party when a person is working as an officer or employee of the Federal Government; 18 U.S.C. 205, which makes it a crime for any Federal employee to appear as an agent or attorney on behalf of anyone in a proceeding to which the United States is a party; 18 U.S.C. 207, which makes it a crime to make certain communications to an official of the Federal Government on behalf of any other person if the communications are made "with the intent to influence"; and 18 U.S.C. 208, which is a general conflict-of-interest provision that makes it a crime for a Federal employee to participate "personally and substantially" in any way in a matter in which he, himself, his family, a partner, or certain others have "a financial interest." The nonpartisan Office of Government Ethics has called the waiver of these criminal ethics laws, which carry penalties of up to 5 years imprisonment for willful violations: "antithetical to sound Government ethics policy and thus to sound Government. Such across-the-board statutory waivers for someone other than a mere advisor is unprecedented and, we believe, inadvisable."

Those favoring the amendment contended:

(See other side)						
YEAS (42)		NAYS (57)			NOT VOTING (1)	
Republicans (42 or 76%)	Democrats (0 or 0%)	Republicans (13 or 24%)	Democrats (44 or 100%)		Republicans (0)	Democrats (1)
Abraham	Hutchinson	Campbell	Baucus	Johnson		Akaka- ⁴
Allard	Hutchison	Collins	Biden	Kennedy		
Ashcroft	Inhofe	D'Amato	Bingaman	Kerrey		
Bennett	Kempthorne	Domenici	Boxer	Kerry		
Bond	Kyl	Grassley	Breaux	Kohl		
Brownback	Lott	Hagel	Bryan	Landrieu		
Burns	Lugar	Hatch	Bumpers	Lautenberg		
Chafee	Mack	Jeffords	Byrd	Leahy		
Coats	McCain	Santorum	Cleland	Levin		
Cochran	McConnell	Snowe	Conrad	Lieberman		
Coverdell	Murkowski	Specter	Daschle	Mikulski		
Craig	Nickles	Stevens	Dodd	Moseley-Braun		
DeWine	Roberts	Warner	Dorgan	Moynihan		
Enzi	Roth		Durbin	Murray		
Faircloth	Sessions		Feingold	Reed		
Frist	Shelby		Feinstein	Reid		
Gorton	Smith, Bob		Ford	Robb		
Gramm	Smith, Gordon		Glenn	Rockefeller		
Grams	Thomas		Graham	Sarbanes		
Gregg	Thompson		Harkin	Torricelli		
Helms	Thurmond		Hollings	Wellstone		
			Inouye	Wyden		

EXPLANATION OF ABSENCE:

- 1—Official Business
- 2—Necessarily Absent
- 3—Illness
- 4—Other

SYMBOLS:

- AY—Announced Yea
- AN—Announced Nay
- PY—Paired Yea
- PN—Paired Nay

During markup on this bill, an amendment was adopted to add an IRS union representative to the proposed IRS oversight board. Then, because this addition created inherent conflict-of-interest problems, another amendment was adopted to waive the conflict of interest laws that apply to all other Federal employees. This IRS union representative will be a very privileged individual, because he alone will be allowed to commit criminal ethics violations for which any other employee would be imprisoned.

The problem is that the representative will not merely be representing members, he will be involved in making substantive decisions on IRS policies. The mission of the IRS is collect revenue that is due fairly, efficiently, and in the least burdensome manner possible. The IRS does not exist to serve its employees, though that is the sole mission of the IRS union representative. The conflict of interest is huge. What would happen if the IRS wanted to adopt tough new policies for dealing with IRS agents who pressure people into paying more than they owe? The union almost certainly would want to have more lenient treatment--perhaps retraining or stern warnings--rather than suspensions, demotions, or firings. Whose interest would come first--the public's or the IRS employees'? Similarly, suppose the union were to file a lawsuit against the IRS. The union representative in that case would have the responsibility both to work on advancing the lawsuit for the union and on defending against the lawsuit for the oversight board. Again, whose interest would be served?

The fact that our colleagues have added the provisions to waive the conflict-of-interest laws shows that they understand that there is a problem. However, they excuse that problem by saying that they think that the board will run better with a union representative and that exceptions to ethics laws are frequently made. To their first argument, we respond that we suppose they may be right that IRS employees may be happier in going along with decisions if their representative has been able to subvert the public interest to their benefit in the making of those decisions. That point is irrelevant to us, though, because we are not concerned with accomplishing what is easy--we are concerned with accomplishing what is right. Their argument on exceptions being made to the ethics laws conveniently overlooks several key facts. It is true, as they say, that the Office of Government Ethics has reported 609 exemptions being granted to the ethics laws. However, it is also true: that waivers can only be given when they meet specific statutory tests; that the Office of Government Ethics knows of no instance in which a blanket waiver from the laws, as proposed by this bill, has ever been given; and that the Office of Government Ethics has specifically written that "it would be extremely difficult for a reasonable person to determine that the interests this individual Board Member will undoubtedly have through his or her affiliation with the organization could meet those waiver tests."

Federal oversight boards frequently and appropriately consult with union representatives on matters of concern to unions. When those boards are purely advisory, it is also permissible to have union representatives as members. In this case, though, the board will have more than advisory authority. To the extent that this oversight board makes binding decisions in the public interest that also involve union interests, the union member should not be involved. The Thompson/Sessions amendment would strike the unique, unprecedented waiver of all of the Federal ethics laws for this union representative. We urge its adoption.

Those opposing the amendment contended:

We appreciate our colleagues' motivation in offering this amendment, but we believe that they are so caught up in defending the process that they will unintentionally hurt the interest, the public interest, which they are trying to defend. We have been working on restructuring the IRS for some time now. As part of that process, we served for more than 1 year on the National Commission on the Restructuring of the IRS. The Commission's recommendations form the core of the bill before us. Rob Tobias, the President of the IRS union and the union representative who will likely serve on the advisory board, was instrumental in the Commission's work. After working with Mr. Tobias for some time now, we are absolutely convinced of the union's utter sincerity and resolve to enact far-reaching reforms. Most IRS employees are hard-working, honest individuals who are dismayed at the culture of intimidation and abuse that exists in the agency. They want their union to push for reforms, they want and deserve an avenue to have their unique knowledge and expertise brought to bear in any reorganization efforts, and they want and deserve to have assurances that they will be treated fairly in any such efforts. If it had not been for the participation of Mr. Tobias, it is probable that the Commission, barely, could have agreed on a reorganization plan, but that plan probably could have not been enacted. Because of his participation, a very strong plan was issued with overwhelming bipartisan support and support from all affected parties. If we were to deny the IRS employees union a voice in the oversight board, we fear that the result will be an end to the cooperation we have had to date. We certainly understand that there is an inherent conflict of interest. We think that conflict of interest, in this case, is in the public interest to allow. Congress's primary motivation in passing conflict-of-interest laws was to block hidden conflicts from corrupting the public interest. Nothing is hidden in this instance--everyone knows why a union member will be put on the board. Further, when Congress passed those laws it did not pass them to be absolute bans--it included authority to grant waivers when appropriate. In fact, the Office of Government Ethics reports that there have been 609 such waivers. The ethics laws are not ends unto themselves; they exist to advance the public interest, and should be followed only to the extent that following them serves that end. In this case, it is better to grant waivers. We therefore oppose this amendment.